

**PROPERTY AND RIGHT-OF-WAY COMMITTEE MEETING  
THURSDAY, SEPTEMBER 20, 2007 – 10:00 AM  
CITY HALL, 8<sup>TH</sup> FLOOR  
COMMISSION CONFERENCE ROOM**

**BOARD MEMBERS PRESENT**

Peter Partington, City Engineer  
Mark Darmanin, Utilities Distribution, and Collections Manager  
Tony Irvine, City Surveyor  
Tom Terrell, Public Works Maintenance Manager  
Anthony Fajardo, Planner II  
Carol Ingold Mordas, Parks Supervisor  
Bob Dunckel, Assistant City Attorney III  
Victor Volpi, Senior Real Estate Officer  
Michael Maloney, Code Enforcement Manager

**STAFF AND GUESTS**

Ken Mikell, Time Warner Telecom  
Robert Clabaugh, Time Warner Telecom  
Leigh Kerr  
Bryan Haagenson, Haagenson & Haagenson  
Linda Strutt, Linda Strutt Consulting  
Donald Bastedo, Bermuda Riviera Homeowners Assn.  
Diana Alarcon, City Parking Services  
Jeff Lucas  
David [Szwick]  
Elizabeth Rivera, Recording Clerk, Prototype Inc.

**CALL TO ORDER**

Mr. Partington called the meeting to order at 10:12 a.m. and stated this was a Committee with the responsibility of advising the City Manager and City Commission on matters connected with City property and public right-of-way.

Following roll call, it was determined that a quorum was present.

**ITEM ONE:**                      **APPROVAL OF AUGUST 22, 2007 MINUTES**

**Motion** made by Mr. Darmanin, seconded by Mr. Terrell to approve the minutes with the following correction: "Two items were requested by Mr. Darmanin to be added to the next meeting agenda: Updates to Palmdale pump station and the sludge pit on Peters Road." In a voice vote, the motion passed unanimously.

Mr. Volpi stated he has been working on Palmdale and the sludge pit regarding status, reporting that there are contracts and legal documentation to be prepared. This matter will be placed on the next agenda for further discussion.

**ITEM TWO:**                      **VACATION OF ALLEY**

ADDRESS OR

GENERAL LOCATION: Between SW 14 Court and SW 15 Street and SW 4 Avenue and the FEC Railroad

EXPLANATION: Eastside Toy Storage, LLC requested a positive recommendation to vacate a portion of an alley in block 55 of "Lauderdale" 2-9. This alley is located between SW 14<sup>th</sup> Court and SW 15<sup>th</sup> St and SW 4<sup>th</sup> Ave and the FEC Railroad

APPEARANCE: Leigh R. Kerr, Agent for Owners

Mr. Kerr provided photographs detailing the area. He pointed out the purpose of both vacation requests is to clean up the sites and provide fencing as well as additional security. Per Mr. Kerr, fire rescue expressed no concern regarding the vacation and there are no known water or sewer facilities. There are utility poles and they are willing to work with FPL and any other utilities in that regard. Letters of approval have been obtained from the nearby residents.

Mr. Dunckel noted that "vacation extinguishes the public's right to travel; it does not extinguish private rights of easement" indicating that fencing blocking another's access right to their property can result in an action for injunctive relief to get the fence removed. Mr. Szwick stated they had spoken to the abutting property owners and have agreed to grant them a permanent continuous easement to come across the petitioner's property into their own property if needed. An explanation of the current and proposed access was given.

Mr. Irvine expressed concern regarding getting into a "private business agreement" between the parties as part of a public process. Mr. Dunckel concurred, adding if it is necessary in order to accomplish the vacation to enter into side agreements, perhaps there should not be a vacation at all. He also asked as to the presence of utilities and if the plan is to have the power services relocated. Mr. Kerr reiterated they would work with FPL to provide another easement for the utilities.

In response to Mr. Partington's question, Mr. Kerr stated the vacation would achieve better security for the site, clean up the site, and make it more marketable, as there is a demand for private storage which is the intended use of the property.

Mr. Irvine inquired regarding the Code prohibition of creating a dead end alleyway. Mr. Fajardo was not sure of the exact plan, but noted that across the tracks there is a master plan study ongoing with a proposal to create design guidelines for Andrews Avenue to the railroad tracks. Future impact across the tracks is unknown, as redevelopment could be proposed on a widening scale for adjoining sites.

Mr. Dunckel cautioned against "trying to read the tea leaves," however, once the property is vacated the vacation will show in the public records and subsequent owners would be buying their properties subject to same. He also asserted that "if he's got a real smart lawyer" a private right of easement can be asserted which survives the extinguishment of the public's right to use the alley, "Hence, the argument that the chain link fence is no longer desired and may have to be removed."

Mr. Partington questioned whether the neighbors would be in agreement with the proposal if they had not been promised a guarantee of alternate access.

Mr. Kerr said that the alternative would be to fence the property as it currently exists blocking off access to neighboring properties through the shortest route, which is now via their property. Mr. Swzick emphasized the property will be fenced regardless; it is a question of where the fence will ultimately be located. He felt the neighbors would support the vacation with or without the access as the general thought is "it would be nice to clean the alley up."

Mr. Irvine remarked that he did not put much stock in the adjoining parties' acquiescence of the request as it seems to be part of an ongoing negotiation.

Mr. Terrell felt that the Committee did not have enough information to make a decision as no property owners were at the meeting to present their opinions.

Discussion continued regarding the ordinance pertaining to and relevance of the dead end.

The prevailing view of the Committee, summarized by Mr. Partington, was even if they had evidence of granting of the access agreement to the adjoining property owners, they would not want to condition the City's approval on that agreement.

**Motion** made by Mr. Terrell, seconded by Mr. Darmanin, to defer this matter until the next meeting pending receipt of more information or hearing from the adjoining property owners, and owners to supply a copy of the current title insurance policy. In a voice vote, the motion passed (with Mr. Irvine dissenting).

**ITEM THREE:**                    **VACATION OF ALLEY**

ADDRESS OR

GENERAL LOCATION: Between SW 16 Court and SW 15 Street and SW 4 Avenue and the REC Railroad

EXPLANATION: Eastside Toy Storage, LLC requested a positive recommendation to vacate a portion of an alley in block 58 of "Lauderdale" 2-9. This alley is located between SW 16<sup>th</sup> Court and SW 15<sup>th</sup> St and SW 4<sup>th</sup> Ave and the FEC Railroad

APPEARANCE: Leigh R. Kerr, Agent for Owners

Photographs of the alley were provided by Mr. Kerr and reviewed by the Committee. Mr. Kerr stated that there are different property owners with this vacation; however, the conversations with them have been the same.

Mr. Irvine showed the plat with the alleys running in a "T" formation, suggesting extinguishing one alley and combining a complete alleyway north and south.

Mr. Terrell expressed concern once again regarding the neighboring property owners not being in attendance.

**Motion** made by Mr. Terrell, seconded by Mr. Dunckel, to defer. In a voice vote, the motion passed (with Mr. Irvine dissenting).

**ITEM FOUR:**                    **MOT / FOUNDRY SELF-STORAGE PROJECT**  
**NORTH FLAGLER AVENUE, BETWEEN NW 4 AND**  
**NW 5 STREETS**

ADDRESS OR

GENERAL LOCATION: N Flagler Avenue, between NW 4 and NW 5 Streets to

EXPLANATION: Hooper Construction request for a positive recommendation to temporarily close most of North Flagler Avenue, between NW 4 and NW 5 Streets to facilitate the construction of the (6 story) Foundry Self Storage Project located at 410 North Flagler Avenue. The owner/applicant owns lots 29-36 (adjacent) and is requesting that these lots be used for a staging area as well. The closure of North Flagler Avenue will be due in

part to install a 6-inch fire line in the eastern portion of the right-of-way. The applicant stated construction would be from October 2007 through January 1, 2009. They plan to restore all pavement, sidewalks and landscaping. The vehicles, equipment, and materials will not be stored in the right-of-way, parking meters will not be affected, and the area will be fenced with the appropriate signage.

APPEARANCE: Linda Strutt, AICP / Agent for Owners

Ms. Strutt confirmed the entire area will not be closed in order to allow property owners at each end of the roadway to access their properties.

Mr. Dunckel noted the City Commission would be looking for a parking plan for the construction workers. Ms. Strutt stated they would be leasing the old One Stop location, approximately one block from the construction site, which has 35 spaces and will accommodate necessary employee parking needs. No complaints have been heard regarding the ongoing construction project to date.

The alley west of 4<sup>th</sup> will be reopened before there are any further closures; 1<sup>st</sup> Avenue will be open as well.

Mr. Partington asked why the closure would be needed for so long and was advised the development has a 12-14 month build-out schedule. The City Commission will have to approve the revocable license and will provide authority to close the road in lieu of the City Manager.

Mr. Irvine asked regarding parking on 4<sup>th</sup> Street and was advised it would not be affected by the project. He also asked whether the FEC would have to be considered. Mr. Dunckel opined that since the back portion is on the peripheral of the plat it would travel with the maker of the plat and the properties within the plat as opposed to going through FEC, although this matter may ultimately need to be decided in the courts.

**Motion** made by Mr. Partington, seconded by Mr. Dunckel, to recommend approval of the temporary road closure subject, implementation being subject to the alley being fully reopened to traffic and also NW 1<sup>st</sup> Avenue also being fully opened to traffic. In a voice vote, the motion passed unanimously.

Item Six was then taken out of order on the agenda.

**ITEM SIX:**                      **GATE IN THE RIGHT-OF-WAY**

ADDRESS OR

GENERAL LOCATION: NE 34 Avenue, just north of NE 30 Street

EXPLANATION:            The Bermuda Riviera Homeowners Association (HOA) requests a positive recommendation to remove the wood piles (8" x 8") and railings (2" x 12") on NE 34 Avenue, just north of NE 30 Street and replace with a new (15' wide x 5' tall) aluminum gate. The HOA will maintain the gate and a key will be given to the Fire Department for emergency access. The gate will be installed at the Association's expense and all necessary permits will be obtained.

APPEARANCE:            Donald Bastedo, Homeowner and Board Member of Bermuda Riviera Homeowner's Association  
Heslop Daley, Project Engineer, Public Works

Mr. Volpi gave a brief history of this matter advising that previous meeting minutes reflected the closing of the area and the quit claim from the adjacent homeowner of her interest in the underlying fee, although no actual paperwork reflecting this agreement has been located.

Mr. Bastedo felt that a gate would increase fire department response time in his community. Mr. Partington saw the gate as being largely for the purpose of providing additional access.

Some demolition will be necessary to open the access road. Mr. Irvine pointed out the advantages of adding ingress and also beautifying the street. It was noted that some type of paving or rock would need to be installed to allow for vehicle traffic.

Mr. Terrell felt the issue was more complicated than presented as "something has caused the adjoining property owner on the north side to take over half of the road, remove half of the road, landscape half of the road, and take that section and turn it into essentially what is a private driveway." It is unknown if the homeowner had been given the authority to take that action. Purportedly there are licensing and vacation agreements.

Mr. Partington remembered that City staff and the Board had been in agreement on this matter; however, it is unknown if all the "legal i's were dotted." The desire at the time had been to not perpetuate the appearance of a regular road; there

had never been any intention to give public rights of access across that property. Mr. Irvine also remembered the reason they had specifically asked for a quit claim, i.e., to avoid the City being sued for abandonment and safeguard the right-of-way interest.

Mr. Terrell cautioned that the plans must show alignment of the gate with the asphalt.

Mr. Volpi suggested obtaining a survey.

It was also recommended that responsibility for maintenance, replacement and repairs be specifically spelled out in the agreement. The mechanism to accomplish the request will be an engineering permit conditioned upon the license agreement.

Although it is anticipated that the installation and maintenance will be done by the Homeowner's Association, Mr. Dunckel said documents dated September 13, talked about the cost being "subsidized" by Bermuda Rivera, with labor and costs to be "shared" by the City of Fort Lauderdale and the Association. He pointed out the disparity with the "spoken words that I've heard today." He asked that if they adopt the project, the City is absolutely clear that the expenses will be borne by the Association and not the City.

Mr. Partington pointed out the letter is not totally unequivocal on the acceptance by the Association of the full maintenance obligation; however, he said they will make that the case in the license agreement accompanying the engineering permit. Mr. Bastedo confirmed the Association's agreement to maintain and replace the gate.

Discussion continued regarding fire department access through installation of a key box and emergency bypass to open the gate. Mr. Partington felt a neighborhood representative should have a key to the gate also.

Mr. Terrell did not believe there was 15' of asphalt on the north side, reiterating that the gate will have to line up with the existing road.

Mr. Partington summarized the procedure as follows: an engineering permit application to the City Engineer with an accompanying license agreement, a recommendation from the Committee, and conformity to Fire Department standards of locking emergency exit gates. He stated it does not appear the gate needs to be wider than 12' as there is only approximately that amount of asphalt on the north side. The issue of the hard material will have to be determined.

**Motion** made by Mr. Irvine, seconded by Mr. Terrell, to recommend approval of the plans presented for a 15' gate, subject to engineering permits and provision of a surface that can support 32 tons as required by the Fire Department; and, if necessary, widening the support area around the existing pavement; subject to access being under the sole control of Fire Department; subject to the City Attorney's office reviewing the status quo and drafting any additional requirements or licenses that may be necessary to formalize the existing condition with the adjoining driveway and landscaping. In a voice vote, the motion passed unanimously.

[Mr. Partington then left the meeting with Mr. Irvine taking over as Chair.]

[Walk on item]

**ITEM FIVE:**                      **REGISTRATION AS A UTILITY**  
**(TELECOMMUNICATIONS) OWNER/OPERATOR**

ADDRESS OR  
GENERAL LOCATION: N/A

EXPLANATION:                      Time Warner Telecom of Florida would like your positive recommendation to register with the City of Fort Lauderdale as a utility owner/operator in all municipal rights-of-ways, in accordance with Chapter 25 of our City Code, Sections 200-214.

APPEARANCE:                      Adrienne Leonard and Gene Mohen, Time Warner Telecom of Florida

Mr. Clabaugh appeared on behalf of Time Warner.

Mr. Dunckel stated there are several requirements to register under the City's Code of Ordinances, Chapter 25, "Rights-of-way Administration," and, as he did not have a copy of Chapter 25 with him, he did not know if all specifics had been met, asking that the matter be deferred until they could go through the checklist.

**Motion** made by Mr. Terrell, seconded by Mr. Darmanin, to defer. In a voice vote, the motion passed unanimously.

There being no further business to come before the Committee the meeting adjourned at 11:37 a.m.